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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,383	01/05/2004	Scott Blum	31948-1020	6829
7590 Mitchell P. Brook, Esq. Suite 200 11988 El Camino Real San Diego, CA 92130			EXAMINER DURAN, ARTHUR D	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 02/26/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/752,383

**Applicant(s)**

BLUM, SCOTT

**Examiner**

Arthur Duran

**Art Unit**

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date 4/5/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-24 have been examined.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 recites the limitation "identifying information". There is insufficient antecedent basis for this limitation in the claim. Claim 8 is dependent upon claim 8 which is dependent upon claim 1. There is no "identifying information" limitation in claim 6 or 1. Correction required.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9, 16-24 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent a method claim must (1) be tied to a particular machine or apparatus (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method claim that fails to meet one of the above requirements is not in compliance with

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the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. To correct this issue, the independent claim could be amended such that at least one significant feature (not just data gathering or outputting) of the body of the claims actively uses a technological apparatus (computer, server, processor, etc).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Agrawal (20040098313).

Claims 16, 1, 10: Agrawal discloses a method of conducting commerce via an electronic communications network in which a second website advertises via a first website, the method comprising:

requesting access to a second website from a first website;

requiring receipt by the second website of an access operation input; and

providing a destination page from the second website after receipt of the access operation input, the destination page providing data pertaining to a product or service for sale via the second website (Figure 22).

Also, notice in Agrawal that the system can proceed to the merchant website or back to the associate website (Figure 22; [103], notice the incorporation by reference to 6,029,141)

Examiner notes that Applicant's Specification states that the code can be entered by the user or computer ([15]).

Claims 2, 11, 17: Agrawal discloses the method as recited in claim 1 further comprising: counting the number of times correct access operation inputs are received by the second website; and generating a click count corresponding to the number of correct access operations ([103]).

Claims 3, 12, 18: Agrawal discloses the method as recited in claim 2 further comprising: using the click count corresponding to the number of correct access operations as the basis for determining a fee owned on a pay-by-click basis by the second website to the first website ([103]).

Claims 4, 13, 19: Agrawal discloses the method as recited in claim 2 further comprising: reporting the click count to the first website ([103]).

Claims 5, 20: Agrawal discloses the method as recited in claim 1 further comprising: entering into a pay-by-click advertising agreement between the first website and the second website ([103]).

Claims 6, 14, 21: Agrawal discloses the method as recited in claim 1 further comprising: providing an interim landing page (Figure 22; [191, 197]). Notice that the confirmation page acts as an interim page.

Claims 7, 22: Agrawal discloses the method as recited in claim 6 further comprising: supplying Internet address identifying information from the second website corresponding to the interim landing page (Figure 22; [191, 197]).

Claims 8, 23: Agrawal discloses the method as recited in claim 6 further comprising: user selection of the identifying information to signal the second website to provide the interim landing page data to the user making the selection (Figure 22; [191, 197]). Notice that the user selects or interacts with the interim/confirmation page.

Claims 9, 24, 15: Agrawal discloses the method as recited in claim 1 wherein the first website comprises an advertising provider website and the second website comprises an Internet commerce website (Figure 22; associate and merchant).

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Keller (5821933; Figures 3, 5, 6, 9) and Jalili (6209104; Figures 5, 8, 9) disclose the user entering a graphical challenge password in order to proceed;
- b) Isikawa, Granik, Zuili disclose click fraud and preventing click fraud by confirmation codes and pages;
- c) Kontogouris and Hamzy and Auxier disclose the user entering an answer before being allowed to proceed towards a desired page.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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6/15/09